the jury on the question whether the person who committed the act knew that it was likely to cause death did not cause a substantial miscarriage of justice.

In the result, the conviction is quashed and the sentence set aside, and there will be a new trial on a charge of culpable homicide not amounting to murder.

New trial ordered.

Solicitors: *P. T. Wong & Co.*

INDO AUSTRALIAN TRADING CO. LTD. v. LIM HOON & ANOR.

[A.C.J. (Chua J.) June 9, 1961]

[Singapore — District Court Appeal No. 23 of 1960]

Landlord and tenant — Control of Rent Ordinance (Cap. 242), ss.2, 14, 15, 16 — Whether tenant's widow protected after his death.

The question for consideration in this case was whether the legislature intended to protect the widow who continues to reside in the premises after the death of her husband, the tenant. It was argued (a) that as "tenant" as defined in the Ordinance does not include a widow, she does not automatically become a tenant on the death of her husband, (b) that she could be such a tenant only if the tenancy of her husband was still in existence.

Held: (1) the definition of "members of the family" which includes the words "widow," "widower" and "legal personal representative" clearly indicates that the legislature intended that the tenancy should continue after the death of the tenant where the widow continues to reside in the premises;

(2) no order or judgment for the recovery of possession of any premises comprised in a tenancy can be made or given where the premises are occupied by any of the persons specified in section 2 as members of the tenant's family and that this restriction is not affected by the death of the tenant.

Case referred to:—

(1) *B. T. Hassan* v. *G. A. Scully* [1951] M.L.J. 41.

DISTRICT COURT APPEAL.

L. A. J. Smith for the appellants.

Lim Ewe Huat (Asst. Director of Legal Aid) for the respondent.

Cur. Adv. Vult.

Chua J.: This is an appeal from the judgment of the learned District Judge dismissing the appellants' claim for possession of part of a piece of land (which I will refer to as the said land) known as Lot III Mukim XXVIII.

The facts are shortly these. One Is Koo built a house on the said land some twenty-three years ago with the consent of the then owner of the said land to whom he paid ground rent. Is Koo and his family lived in this house. In March, 1948, Is Koo died and his widow, the 1st respondent, continued to reside in the house with her children, one of whom is the 2nd respondent, and the 1st respondent is still living in the house. In July, 1950, the appellants became the owners of the said land with the knowledge that Is Koo was the tenant but not knowing that Is Koo had died in 1948. Ground rent was paid and accepted by the appellants and rent receipts were issued in the name of Is Koo. In February, 1957, the appellants learnt that Is Koo was dead and they refused to accept any more ground rent. On the 30th November, 1959, the appellants served a Notice to Quit expiring on the 31st December, 1959, addressed to the Chief Justice of Singapore, in respect of the said piece of land. The widow has since petitioned for Letters of Administration to the Estate of Is Koo and the petition is still pending.

The learned District Judge held that the first respondent, being the present occupier of the domestic premises, was entitled to the protection accorded to her by section 16(c) of the Control of Rent Ordinance (Cap. 242) and he dismissed the appellants' claim.

Section 14 of the Control of Rent Ordinance reads as follows:—

"No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in this Part of this Ordinance."

Section 15 sets out the cases where an order or judgment as is referred to in section 14 may be made.

Section 16(c) provides:—

"16. In the case of any domestic premises such an order or judgment as is referred to in section 14 of this Ordinance may without prejudice to the provisions of section 15 be made in any of the following additional cases, namely:—

(a) .....

(b) .....

(c) Where neither the tenant nor any member of his family is residing in the premises or any part thereof.

In section 2 "Members of his family" is defined as follows:—

"'members of his family' means:—

(i) the husband or widower; or

(ii) the wife or widow; or

(iii) the father or mother; or

(iv) a son or daughter either of whom is over sixteen years of age; and

where the tenancy has not been determined according to law includes a legal personal representative."

The only ground of appeal is that —

"the learned District Judge was wrong in law in holding that no order for possession could be made, as the deceased tenant's widow was occupying the premises, and should have held that the protection accorded to the widow of a deceased tenant under the Control of Rent Ordinance could only be claimed in those cases where the tenancy was still in existence by devolution or otherwise and not where there was no person with any title at all."

Mr. L. A. J. Smith, for the appellants, draws the Court's attention to the difference between the English Act and our Ordinance. In the Increase of Rent & Mortgage Interest (Restrictions) Act, 1920, in force in England, the expression "tenant" includes the widow of the tenant who was residing with him at the time of his death. There is no doubt that under the English Act the tenancy continues for the benefit of the tenant's widow after his death. Mr. Smith points out that under our Ordinance the widow

is not included in the definition of "tenant" and contends that she does not automatically become a tenant on the death of her husband, as is the case in England, and that she can only become a tenant by devolution or by a new contractual tenancy.

Mr. Smith further contends that section 16(c) will protect the widow only in the following cases:

(i) if she has become a tenant and is residing in the premises, in which case she will claim protection as a tenant.

(2) if she has not become a tenant, then she will be protected if the tenancy of her husband is still in existence and has not been terminated and she is residing in the premises, in which case she will claim protection as a member of his family.

Mr. Smith submits that as the widow has not become a tenant by devolution and the tenancy has already been terminated the widow is not protected.

The whole case appears to me to resolve itself upon this question: Did the legislature intend to protect the widow who continues to reside in the premises after the death of her husband, the tenant?

In the definition of "members of his family" it is to be noted that the words "widow", "widower" and "legal personal representative" are used. To my mind that clearly indicates that the legislature intended that the tenancy should continue after the death of the tenant where the widow continues to reside in the premises. There is no doubt whatsoever that the legislature intended to protect the widow. I am confirmed in that view by a consideration of the judgment of Mr. Justice Jobling in the Federation of Malaya case of *B.T. Hassan* v. *G.A. Scully*. (1)

In my view the judgment of the learned District Judge is correct in that no order or judgment for the recovery of possession of any premises comprised in a tenancy can be made or given where the premises are occupied by any of the persons specified in section 2 as members of the tenant's family and that this restriction is not affected by the death of the tenant.

This appeal is therefore dismissed.

Appeal dismissed.

Solicitors: *L. A. J. Smith; Director of Legal Aid.*

VEERAPILLAI v. OOI SWEE HOE

[A.C.J. (Rigby J.) June 16, 1961]

[Penang — Civil Appeal No. 3 of 1961]

Landlord and tenant — Control of Rent Ordinance, 1956, ss.2, 12(1)(l) and (m) — Whether erection of houses of temporary character on vacant land protected — "Premises comprised in a tenancy."

The appellant was many years ago let into possession of vacant land by the respondent's predecessor in title. With the permission of the latter, the appellant had erected thereon houses of a temporary character. In an action by the respondent for the recovery of possession of the land, the President in the Court below gave judgment for the respondent.

On appeal,

Held: (1) the words "premises comprised in a tenancy" must mean and include all those premises included in the tenancy as at the date of the application for a Court Order for possession, and are not to be construed as being confined to premises which were originally the subject matter of the tenancy;

(2) buildings of a temporary character erected upon land which was originally let as vacant land are protected under the Control of Rent Ordinance by virtue of the provisions of section 12(1)(*l*) of the Ordinance;

(3) as the premises in question were subject to the Control of Rent Ordinance and as the respondent had taken none of the steps required of him in accordance with section 12(1)(*l*) and (*m*) of the Ordinance as a condition precedent to his application for recovery of possession of his land, the appeal was allowed.

Cases referred to:—

(1) *Evelyn Saw Hee Li* v. *Gan Tit Sun* [1959] M.L.J. 146.

(2) *Mayor Singh* v. *Lau Geok Swee* [1960] M.L.J. 285.

(3) *Chua Sai Ngoh* v. *Beh Ai Meng* [1955] M.L.J. 167.

(4) *Re Moore, Moore* v. *Bigg* [1906] 1 Ch. 789.

(5) *A.L.M.M. Muthukaruppan Chettiar* v. *Haji Ibrahim* [1941] M.L.J. 150.

(6) *Minet* v. *Leman*, 50 E.R. 606.

(7) *National Assistance Board* v. *Wilkinson* [1952] 2 Q.B. 648.

CIVIL APPEAL.

R. D. Hume for the appellant.

S. Thillaimuthu for the respondent.

Rigby J.: This is an appeal from a decision of the learned President of the Sessions Court granting to the respondent, the plaintiff in that action, an Order for the recovery of possession of a piece of land on which the appellant had built two houses. The respondent had recently purchased the land from its previous owner. The statement of claim averred — and the allegation was not specifically traversed — that the houses were premises of a temporary character. It would appear that the appellant many years ago had leased the land, as vacant land, from the previous owner and had been paying ground rent of $1 per month. During the period of his occupancy of the land he had, according to the statement of defence, with the consent of the owner of the land, erected these two houses on the land for the occupancy of himself and his family.

The learned President held that the parties were bound by their pleadings and there was no denial by the present appellant that the houses were of a temporary character. He held, in substance, that the houses were buildings of a temporary character and, following the decisions of this Court in *Evelyn Saw Hee Li* v. *Gan Tit Sun* (1) and *Mayor Singh* v. *Lau Geok Swee* (2), that they were not protected by the Control of Rent Ordinance, 1956, and that the respondent was entitled to an Order for recovery of possession — due notice to quit having, of course, been properly given.